IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WA.No. 190 of 2000()

AGAINST THE JUDGEMENT IN OP.7375/1994 Dated 25/02/1999

APPELLANT: PETITIONER:

A.V.AMARAVAATHY, HEAD TEACHER,
SURESH NIVAS, THALIPARAMBA P.O.

BY ADV. SRI.GOVIND K.BHARATHAN

RESPONDENTS: RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER FOR GOVERNMENT EXAMINATIONS, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION, KANNUR.

4. THE DISTRICT EDUCATIONAL OFFICER, KANNUR.

5. REV.FR. PASCAL MENDENCE, CORPORATE MANAGER, BISHOP'S HOUSE, CALICUT.

BY SENIOR GOVERNMENT PLEADER SRI.M.R.SABU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 190 OF 2000

Dated this the 13th June, 2007

JUDGMENT

K.T.SANKARAN, J.

The appellant herein filed the Original Petition for the following reliefs:

> "i) declare that the petitioner is entitled to continue in service as Headmistress till the closing of the schools for the mid-summer vacation of the academic year 1994-95 and that respondents have no manner of right to interfere with her continuance in service as such;
>
> ii) issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent to immediately to enter the date of birth of the petitioner as 22.11.1939 in her service book and to give her all benefits arising therefrom;
>
> iii) issue a writ of prohibition or any other appropriate writ, order or direction directing respondents 3 and 4 to refrain from taking any action to treat the petitioner as having ceased to be on duty with effect from the date of the re-opening of the school and/or grant her additional leave etc. purporting to act under the power vested by Rule 60(c) para 2 and from taking any steps to interfere with the petitioner's continuance in service till the end of the academic year 1994-95.
>
> iv) call for the records leading to Ext.P4 order of the 1st respondent and issue a writ of certiorari or any other appropriate writ, order or direction quashing the same;

v) stay all steps initiated by respondents herein to appoint any other person in the place of the petitioner as Headmistress of the Ariyil U.P.School on the re-opening day of the school and or to the petitioner on the basis that her date of birth is 15.6.1939 for the academic year 1994-95 namely June 6, 1994 pending disposal of the above original petition before this Hon'ble Court; and

vi) grant the petitioner her costs in the above original petition and to pass such further orders which may be deemed fit and proper in the circumstances of the case."

2. The appellant applied for correcting her date of birth in the Secondary School Leaving Certificate. The date of birth entered in the SSLC was 15.6.1939. According to the appellant, her correct date of birth is 22.11.1939. Application was filed by her on 4.6.1990 before the second respondent, the Commissioner for Government Examinations, under Chapter VI Rule 3 of the Kerala Education Rules to correct the date of birth in the SSLC. That application was rejected on 30.7.1991. On appeal to the Government, the matter was remitted to be considered by the second respondent again. On 21.2.1993, the second respondent again rejected the application. The appellant filed an appeal to the Government for the second time. As per order dated 27.10.1993 (Ext.P2), the Government allowed the application for correction of the date of birth in the SSLC.

3. Mean while, on 10.12.1992, appellant had filed an application to correct the date of birth in the service records. That application was rejected by the Government by Ext.P4 order dated 2.1.1993, on various grounds including that as per the existing Government Orders the application should have been filed before 15.6.1992. The challenge in the Original Petition includes the challenge against Ext.P4. The learned single Judge held that the appellant herein having not made an application for correction of the date of birth in the service records within the time stipulated in the Orders passed by the Government, the prayer to correct the date of birth in the service records cannot be entertained and no relief can be granted to the petitioner. It is to be noted that the appellant retired from service on 30.6.1994.

4. Learned counsel for the appellant would submit that the learned Judge committed an error in holding that the appellant should have made the application to the Government for correction of date of birth in the service records even before the date of birth was corrected in the SSLC. He submitted that this finding is against the dictum laid down in **Sukumaran Nair** v. **State of Kerala** (1997(1) KLT 530). The argument of the learned counsel for the appellant is without substance on the facts available in

records since the application to the Government for correction of date of birth in service records was made on 10.12.1992, much before Ext.P2 was passed by the Government allowing the prayer for correction of date of birth in the SSLC. Ext.P4 order was passed on 2.1.1993, much before Ext.P2 order was passed by the Government allowing correction of date of birth in SSLC. Therefore, the decision in 1997(1) KLT 530 would not help the appellant in raising the contention that the learned single Judge was not right in holding that the appellant should have applied to the Government earlier.

5. The Original Petition was filed on 2.6.1994, that is, 28 days before the retirement of the appellant. The Supreme Court has held in various decisions that application for correction of date of birth in the service book at the fag end of the service cannot be entertained. See **Union of India and others** v. **Mrs. Saroj Bala** (AIR 1996 SC 1000 = (1996) 2 SCC 81); **State of T.N.** v. **T.V.Venugopalan** (1994) 6 SCC 302) and **Visakhapatnam Dock Labour Board** v. **E.Atchanna and others** (JT 1996(3) SC 6). There is no challenge against the Government Order fixing the time limit that the application for correction of date of birth in the service records should be made before two years of the date of retirement. The appellant having made

the application after the date fixed for making the application, we are of the view that the learned single Judge was perfectly justified in rejecting the prayers made by the petitioner. There is no ground to interfere.

The Writ Appeal lacks merit and it is accordingly dismissed.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

W.A.NO. 190 OF 2000

JUDGMENT

13th June, 2007